

Brigham Young University Law School BYU Law Digital Commons

Utah Supreme Court Briefs (1965 –)

1977

Joseph Santana v. Delmar Larsen : Brief of Appellant

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc2



Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

D. Gilbert Athay; Attorney for Appellant Charles Marson; Attorney for Respondent

Recommended Citation

Brief of Appellant, *Santana v. Larsen*, No. 14818 (Utah Supreme Court, 1977).
https://digitalcommons.law.byu.edu/uofu_sc2/513

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

IN THE SUPREME COURT
OF THE STATE OF UTAH

JOSEPH SANTINA, :
Plaintiff-Appellant, :
vs. : Case No. 14818
DELMAR LARSEN, :
Defendant-Respondent. :

BRIEF OF APPELLANT

Appeal from a judgment of the Third Judicial District
Court in and for Salt Lake County, State of Utah

Honorable Stewart M. Hanson, Sr., Judge

D. GILBERT ATHAY
321 South Sixth East
Salt Lake City, Utah 84102
Attorney for Appellant

CHARLES MARSON
Deputy County Attorney
C-220, Hall of Justice
Salt Lake City, Utah 84111
Attorney for Respondent

FILED

AUG 19 1977

Clerk, Supreme Court, Utah

TABLE OF CONTENTS

	Page
STATEMENT OF THE KIND OF CASE.	1
DISPOSITION IN THE LOWER COURT	1
RELIEF SOUGHT ON APPEAL.	2
STATEMENT OF FACTS	2

ARGUMENT:

POINT I: THE GOVERNOR OF UTAH SHALL NOT RECOGNIZE A DEMAND FOR EXTRADITION IF THE EXTRADITING DOCUMENTS FROM THE DEMANDING STATE ARE INCOMPLETE OR DO NOT SUBSTANTIVELY COMPORT WITH THE STATUTORY REQUIREMENTS OF §77-56-3 UTAH CODE ANNOTATED, 1953.	3
---	---

CONCLUSION	5
----------------------	---

CASES CITED

<u>Little v. Beckstead</u> , 11 U.2d 270, 5 358 P.2d 93, (1961)	4, 5
--	------

STATUTES CITED

Utah Code Annotated, 77-56-3	2, 3, 4, 5
--	------------

IN THE SUPREME COURT
OF THE STATE OF UTAH

JOSEPH SANTINA, :
Plaintiff-Appellant, :
vs. : Case No. 14818
DELMAR LARSEN, :
Defendant-Respondent. :

BRIEF OF APPELLANT

STATEMENT OF THE KIND OF CASE

The appellant, Joseph Santina, sought Habeas corpus relief in the Third Judicial District Court in and for Salt Lake County, State of Utah, on the ground that the extradition papers of the demanding state were insufficient to sustain an extradition of appellant to Illinois.

DISPOSITION IN THE LOWER COURT

A petition for writ of habeas corpus was denied on September 30, 1976. The Honorable Stewart M. Hanson, Sr., Judge, presided.

RELIEF SOUGHT ON APPEAL

Appellant seeks an order of this court reversing the judgment rendered by the trial court.

STATEMENT OF FACTS

The appellant was charged by indictment on September 30, 1974, with the crimes of failure to appear and criminal conspiracy in the State of Illinois. On April 1, 1976, appellant was arrested, booked, and incarcerated in the Salt Lake County jail and on April 7, 1976, he was charged with the crime of being a fugitive from justice in the State of Utah.

On June 30, 1976, counsel for the appellant filed a writ of habeas corpus in the Third District Court of Salt Lake County, State of Utah, alleging, inter alia, that, pursuant to §77-56-3 Utah Code Annotated, 1953, the documents demanding petitioner's extradition to Illinois were substantively lacking and not in proper form. Said writ was denied on September 30, 1976. No findings of fact or conclusions of law were ever submitted.

This appeal challenges the disposition of the writ of habeas corpus in the lower court.

ARGUMENT

POINT I: THE GOVERNOR OF UTAH SHALL NOT RECOGNIZE A DEMAND FOR EXTRADITION IF THE EXTRADITING DOCUMENTS FROM THE DEMANDING STATE ARE INCOMPLETE OR DO NOT SUBSTANTIVELY COMPORT WITH THE STATUTORY REQUIREMENTS OF §77-56-3 UTAH CODE ANNOTATED, 1953.

In this appeal, the appellant contends that the lower court erred in not finding that the extradition documents from the demanding state do not comply with statutory requirements set forth in §77-56-3 Utah Code Annotated, 1953, that there is no evidence to support an arrest warrant signed by the governor of Utah, and that therefore, the petitioner has been unlawfully deprived of his liberty by the State of Utah.

Section 77-56-3 Utah Code Annotated, 1953, requires that a demand for extradition be written and it must allege the presence of the person so charged in the demanding state at the time of the alleged crime and that he fled from the state thereafter. This demand must be coupled with a copy of an affidavit made before a magistrate in the demanding state together with a warrant and a statement by the executive authority of the demanding state that the person so charged has broken the terms of his bail, probation, or parole.

The governor of Utah shall not recognize a demand for extradition unless the above enumerated requirements

of the statute are fulfilled. Then and only then does the governor of the State of Utah have authority to issue a valid warrant for the arrest of the person to be extradited.

In Little v. Beckstead, 11 U.2d 270, 5 358 P.2d 93, (1961), the petitioner challenged the validity and legal sufficiency of his arrest and detention in an extradition proceeding and appealed from an adverse judgment in the court below. The Supreme Court affirmed, holding that extradition documents from the demanding state were legally sufficient.

"[4] However, the complete record is before us for examination.

The demand of the state of Oregon for extradition of plaintiff complies with the requirements set forth in Section 77-56-3 of the Utah Code Annotated, 1953. The demand is written, alleging the presence of plaintiff in the state of Oregon at the time of the alleged crime, and also alleging that he fled from the state thereafter. Attached to the demand are a number of documents which the Governor of the state of Oregon certifies to be authentic and true. Among these documents is a copy of the sentence imposed on plaintiff, in addition to the statement of the district attorney of Marion County, Oregon, that plaintiff broke the terms of his bail in leaving the state. The demand by the governor, plus the accompanying documents are sufficient to satisfy the requirements of the statute that the statements be by the executive authority, for the documents and the demand are executed by the governor." Little at 94, 95.

None of the documentation appearing in Little, supra, appears in the record of the case at bar. There is neither a demand by the governor of the demanding state nor any supporting documents sufficient to satisfy the requirements of the statute.

The governor of Utah issued an arrest warrant without the required supporting documentation from the demanding state. The warrant, therefore, was void ab initio and the appellant has been unlawfully detained and deprived of his liberty.

Moreover, counsel for the State of Utah failed to file any findings of fact or conclusions of law after the petition for writ of habeas corpus brought by the appellant was denied. The appellant was thereby substantially prejudiced in the preparation of his appeal to the Supreme Court of Utah.

CONCLUSION

The appellant contends that the lower court erred in not finding that the extradition documents from the demanding state do not comply with statutory requirements set forth in §77-56-3 Utah Code Annotated, 1953, that there is no evidence to support an arrest warrant signed by the governor of Utah, and that therefore, the petitioner has been unlawfully deprived of his liberty by the State of Utah. Little, supra.

Respectfully submitted,

D. Gilbert Athay

D. Gilbert Athay